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IN THE

Supreme Court of the United States

October Term, 1940

No. 632

DETROIT TRUST COMPANY
(formerly Security Trust Company),
a Michigan corporation, Executor of the Will of
Cornelia O. Curtis, deceased,
Petitioner

vs.

FRED L. WOODWORTH,
Collector of Internal Revenue for the
First District of Michigan,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONER

CHARLES F. DELBRIDGE,
Attorney for Petitioner,
2332 Buhl Building,
Detroit, Michigan.

FRANCIS W. McCAULEY,
Of Counsel.

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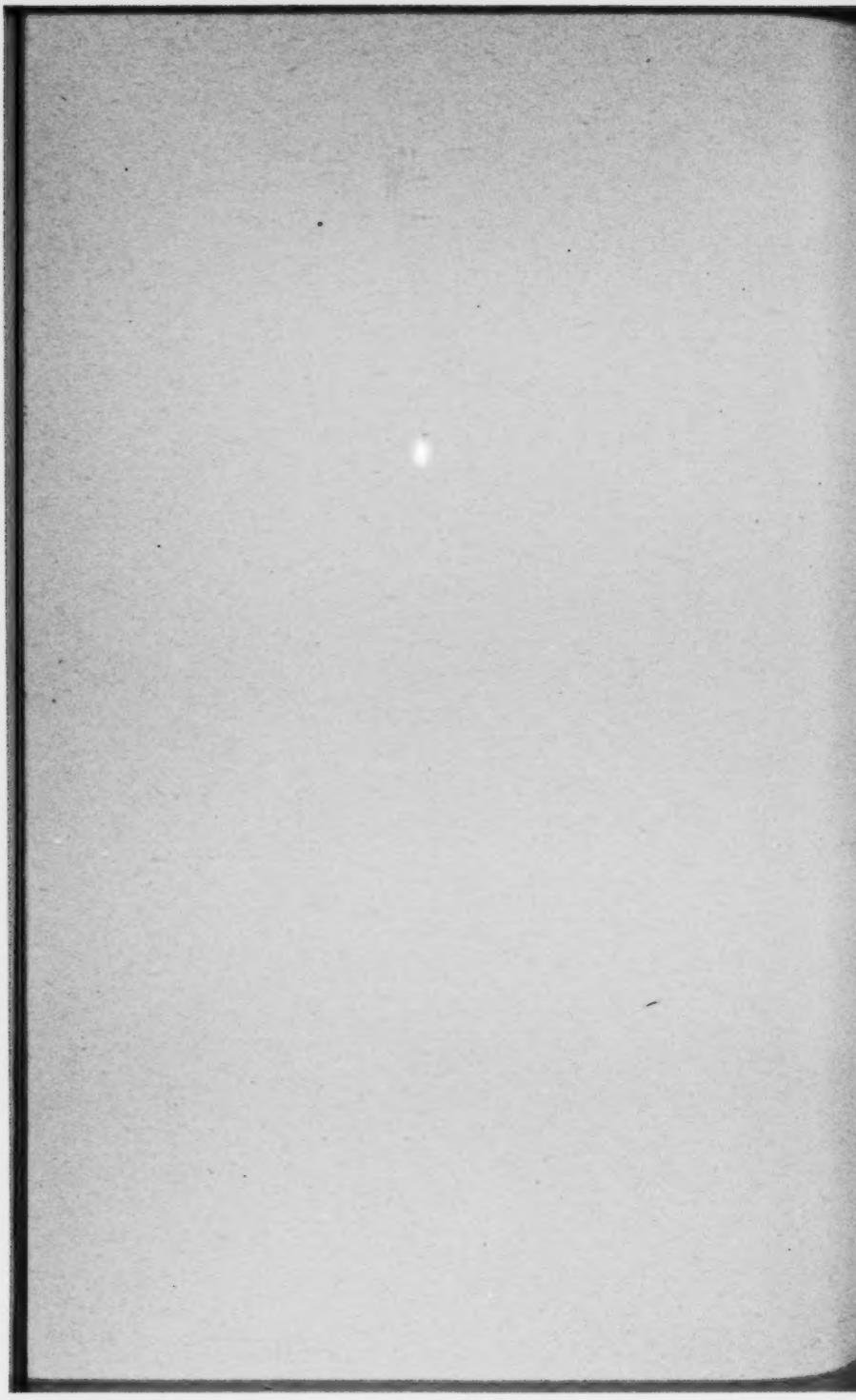

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No question is presented as to the content or construction of the oral agreement, made in open court, limiting the issues in this case. Nor was any such question raised in the Circuit Court of Appeals.

Any question as to the content or construction of such agreement is foreclosed by the record, which is clear and unambiguous.

The judgment (R. 54), states in the language of respondent's counsel, that the "cause came on for hearing pursuant to an agreement that the case be submitted to the court without a jury for its decision upon a trial limited

to the issues raised by the defendant's affirmative defenses as set forth in the amendment to the defendant's pleas."

But, respondent's counsel, now, in the Supreme Court, for the first time, attempt to vary the terms of the stipulation as stated in the judgment, prepared by them, and seek to go beyond the record to claim an oral stipulation not made in open court but in chambers calling for a trial of all the issues, piecemeal and without a jury.

The plaintiff had waited nine years for its case to be called for trial. It was insisting upon its right to a jury trial. But the respondent now claims, in effect, that petitioner waived a trial by jury and agreed to permit of a piecemeal trial in order to save the time of respondent's counsel in court. The record is barren of any support for such a claim.

If, however, the court should feel constrained to look, beyond the record, to the statement made by the District Attorney in open court (R. 88) and there agreed to by petitioner's counsel then we respectfully submit that such statement should not be given a strained construction so as to call for a trial, piecemeal and without a jury, after this case already had been awaiting nine years for a trial by a jury.

CONCLUSION

When the stipulation is given the plain meaning of the language employed, then the only question presented by the petition for certiorari, is, should the Circuit Court of Appeals have directed the entry of judgment for the plaintiff instead of ordering a new trial.

We submit that a writ of certiorari should issue for the reasons stated in the petition.

CHARLES F. DELBRIDGE,
Counsel for Petitioner.

FRANCIS W. MCCAULEY,
Of Counsel.

January, 1941.